

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



October - December 2001

OPINIONS

CIVIL RIGHTS - AGE DISCRIMINATION

Question: Would a municipal ordinance restricting admission to local dance clubs for the purpose of separating minors from adult patrons conflict with the prohibition against age discrimination in Maryland's public accommodations law?

Answer: A municipal ordinance regulating dance clubs might prescribe age limits for admission that were designed for the protection of minors. Such age restrictions would not be preempted by the State public accommodations law.

*Opinion No. 01-024
October 1, 2001*

CONSTITUTIONAL LAW - ESTABLISHMENT CLAUSE - FREEDOM OF SPEECH

The Carroll County Public Library deleted a biblical reference from a commercial business coupon included in a package distributed by the library as part of its summer reading program.

Q1: Was removal of the biblical reference required by the Establishment Clause of the United States Constitution?

Answer: No; including the coupon with the biblical reference intact would not have violated the Establishment Clause.

Q2. Did removal of the biblical reference violate the right of free speech under the First Amendment of the United States Constitution or Article 40 of the Maryland Declaration of Rights?

Answer: The facts concerning deletion of the reference are in dispute. However, excluding the coupon altogether would not have violated constitutional guarantees of free speech.

*Opinion No. 01-025
October 2, 2001*

CRIMINAL LAW - SEXUAL CHILD ABUSE

Question: What is the meaning of "sexual molestation or exploitation," as that phrase appears in the definition of "sexual abuse" in the criminal statute prohibiting child abuse? Does a stepparent who engages in consensual sexual intercourse with a 16-year-old stepchild commit child abuse within the meaning of the statute? Must there be an additional showing that the child's welfare was endangered to establish the crime?

Answer: A stepparent who has sexual intercourse with a minor stepchild commits child abuse, regardless of whether the minor consents to the sexual relationship or whether there is other evidence of harm to the child's welfare.

*Opinion No. 01-027
December 21, 2001*

**HEALTH OCCUPATIONS -
COLLABORATIVE AGREEMENTS BETWEEN
PHARMACISTS AND PHYSICIANS
RELATING TO DRUG THERAPY**

Q1: What legal authority currently permits a pharmacist to enter into a collaborative agreement or protocol with a physician concerning drug therapy in an institutional setting such as a hospital? Are such collaborative agreements limited to institutional settings where the physician and pharmacist work in the same location?

Answer: Under current law, a pharmacist working in an inpatient institution may dispense prescription drugs pursuant to a “medication protocol” established by the institution in accordance with regulations of the State Board of Pharmacy. However, a pharmacist may not dispense a prescription drug without a written or oral prescription from an authorized prescriber. Because the pharmacist does not have independent prescribing authority, the pharmacist may only begin, modify, or discontinue drug therapy in accordance with directions given by the prescriber. Thus, a pharmacist acting pursuant to a physician’s reference to a medication protocol may dispense only the drug, dosage, dosage form, and route of administration specified in the protocol. While Board of Pharmacy regulations limit the use of medication protocols to institutional settings, they do not require that the physician and pharmacist work in the same location.

Q2. To what extent may such an agreement or protocol permit a pharmacist to modify a prescription issued by a physician?

Answer: Under current law, a pharmacist may not modify a prescription provided by a physician absent a direction from the physician, whether or not the pharmacist is acting pursuant to a medication protocol.

Q3. Assume that the General Assembly enacts a law to allow collaborative agreements between physicians and pharmacists, subject to the approval of licensing boards, under which a pharmacist could modify a physician’s prescription according to an

agreed-upon protocol without prior authorization from the physician. What are the antitrust implications of a licensing board’s refusal to approve such an agreement?

Answer: If the General Assembly were to pass a law allowing “collaborative agreements” between physicians and pharmacists subject to the approval of regulatory boards, that law should clearly indicate the grounds on which a proposed agreement could be rejected, to immunize regulatory board decisions from challenge under the antitrust laws.

*Opinion No. 01-026
November 28, 2001*

ADVICE LETTERS

ATTORNEY/CLIENT RELATIONSHIP - LEGAL SERVICES PROGRAM

Question: In the context of a legal services program that provides short-term assistance to individuals with legal questions or problems) such as a telephone hotline or a court house assisted *pro se* program) when is an attorney-client relationship formed between a representative of the legal services program and a person seeking assistance from the program? To what extent can the legal services organization promise confidentiality to the individual seeking assistance?

Answer: A person who seeks short-term limited legal assistance desires information or advice pertinent to his or her particular situation. A legal services organization that limits the scope of its representation of such a client must clearly spell out for the prospective client the limitations on representation and must obtain the client’s consent to those limitations. The limitations may relieve the organization of some of the burden involved in checking for conflicts of interest.

A legal services organization that wishes to provide assistance without entering into attorney-client relationships must ensure that its attorneys, legal assistants, and student interns limit their answers in certain respects, must advise those to whom assistance is provided of limitations on the assistance, and must be prepared to direct individuals who need legal representation to an appropriate referral service.

*Letter to Robert J. Rhudy
Maryland Legal Services Corporation
October 3, 2001*

CHARITIES - INVESTMENTS IN FOREIGN COUNTRY

Question: Would the directors of a Maryland-organized charitable corporation with an endowment fund violate Maryland law if they authorized investment of the charity's funds, including the principal of the endowment fund, in a foreign country?

Answer: Under Maryland law, the governing body of a charitable entity must invest its assets reasonably and prudently in light of the purposes of the charity. Maryland law does not prohibit a charitable corporation from investing at least part of its endowment in assets related to or located in a foreign country. It is permissible for the directors of a charitable corporation to take social factors into account in directing the investment strategy of the charity, as long as the strategy is designed to obtain a reasonable return to carry out the organization's charitable purposes while avoiding undue risk. Restriction of investments to a single foreign country might preclude appropriate diversification.

*Letter to
Delegate Mark K. Shriver
October 11, 2001*

CORRECTIONS - STATE USE INDUSTRIES - CONSTRUCTION WORK

Question: Under what circumstances may State Use Industries ("SUI") perform construction work for State agencies?

Answer: SUI does not have general authority to perform construction work. The law allows SUI to provide only those services that involve substantial inmate labor and for which the Department of General Services is able to compute an average prevailing market price. Thus, SUI does not have authority to act as a general contractor or to perform all the kinds of work that might be described as construction work. Nevertheless, some services related to construction projects may be provided by SUI consistent with its governing statute. Of course, SUI may perform construction work in accordance with specific legislative authorization, as in a capital budget bill.

*Letter to
Stephen M. Shiloh, General Manager
State Use Industries
December 10, 2001*

COUNTIES - BOUNDARIES

Question: For purposes of interpretation of a rule of professional baseball, what is the eastern boundary of Harford County?

Answer: The 1773 law that created Harford County generally describes the limits of that county, and a more recent statute extends the "jurisdiction" of the county into Chesapeake Bay. The appropriate definition depends on the context in which reference to the boundary is made.

*Letter to Alison L. Asti, Esquire
Maryland Stadium Authority*

December 12, 2001

**GENERAL ASSEMBLY -
COPIES OF STATE AGENCY REPORTS**

Question: Should State agencies be sending copies of reports to all members of the Legislature or to all members of a particular legislative committee?

Answer: SG §2-1246 requires an agency to submit five copies of a report to the Department of Legislative Services, which periodically sends a list of reports to legislators. Under the statute, the agency is to provide a copy to a legislator only if the President of the Senate and Speaker of the House give written approval for general distribution, or if an individual legislator asks for a copy.

*Letter to
Delegate Michael R. Gordon
November 27, 2001*

**MEDCO -
STATUS AS STATE AGENCY -
WORK THROUGH MARYLAND STADIUM
AUTHORITY**

Q1: Is the Maryland Economic Development Corporation (“MEDCO”) a State agency?

Answer: MEDCO would be considered a “State agency” in many, if not most, contexts. With respect to the application to MEDCO of any particular law regarding State agencies, one must look to the legislative intent underlying the particular law, as well as to MEDCO’s statute, to resolve the question whether it is a State agency for the particular purpose.

Q2: Under Section 12 of the Consolidated Capital Bond Loan of 1998, is the Maryland

Stadium Authority authorized to work on behalf of MEDCO?

Answer: Section 12 of the Consolidated Capital Bond Loan of 1998 authorizes the Stadium Authority to perform certain types of work for other State agencies and local governments. There is no evidence of legislative intent to limit the types of State agencies for which the Authority may perform work.

*Letter to
Richard Slosson, Executive Director
Maryland Stadium Authority
November 19, 2001*

**MILITARY DUTY -
COMPENSATION OF PUBLIC EMPLOYEES
CALLED TO ACTIVE DUTY**

Question: Does the 15-day annual limit on public officer/employee compensation apply to employees who are members of the Maryland National Guard and who were ordered into active duty by the Governor’s Executive Order on October 2, 2001?

Answer: No; under Article 65, §42A, a public employee/Guardsman called up for active duty under the authority of the Governor is not limited to 15 days of compensation annually, but is entitled to leave with pay for the entire period of active service.

*Letter to
Delegate Adelaide Eckardt
October 30, 2001*

**MINORITY BUSINESS ENTERPRISE PROGRAM -
EXPANDED DEFINITION OF MBE**

Question: Would expansion of the definition of “minority business enterprise” to include certain nonprofit organizations weaken the defensibility of the overall Minority Business Enterprise subtitle of the State Finance and Procurement Article?

Answer: Under current law, a “minority business enterprise” is (a) one that is organized to engage in commercial transactions, is “at least 51% owned and controlled by one or more individuals who are socially and economically disadvantaged,” and is managed and controlled by one or more of the socially and economically disadvantaged individuals who own it; or (b) a nonprofit entity organized to promote the interests of physically or mentally disabled individuals. To help bring agencies that make substantial numbers of contracts with nonprofit agencies into surer compliance with the State’s minority business enterprise program, a proposed amendment to SF §14-301 would expand this definition to include (c) “a not for profit, nonstock corporation that: (i) is organized to promote the interests of socially and economically disadvantaged individuals, and (ii) has a board of directors whose membership is at least 51% comprised of socially and economically disadvantaged individuals.” The proposed amendment would not make the overall minority business enterprise program less defensible, as long as the program remained sufficiently narrowly tailored to achieve a compelling governmental purpose, and as long as the expansion of the definition was supported by sufficient legislative evidence.

*Letter to
Senator Barbara A. Hoffman
November 21, 2001*

MUNICIPAL CORPORATIONS - ANNEXATION OF PUBLIC PROPERTY

Question: May the Town of Princess Anne annex two parcels of property held by the Board of Education of Somerset County, in light of the

consent requirements in the State statute governing municipal annexations?

Answer: The Town may initiate annexation of each parcel of property, provided the properties otherwise qualify for annexation. The consent requirements of Article 23A, §19(b)(1) do not apply.

*Letter to
Somer Cross, Esquire
November 14, 2001*

**OPEN MEETINGS -
GOVERNOR'S REDISTRICTING ADVISORY
COMMITTEE**

Question: Is the Governor's Redistricting Advisory Committee subject to the Open Meetings Law, SG §§10-501 *et seq.*?

Answer: No; because the Governor's Redistricting Committee does not meet the definition of a "public body," it is not subject to requirements of the Open Meetings Law.

*Letter to
Delegate Robert L. Flanagan
December 3, 2001*

**REFERENDUM -
CHESAPEAKE BAY CRITICAL AREA PROGRAM**

Question: Two ordinances adopted by the County Commissioners of Queen Anne's County would make certain changes to the County's Chesapeake Bay Critical Area Program. May these ordinances be petitioned to referendum?

Answer: The County's Chesapeake Bay Critical Area Program was adopted by the County pursuant to NR §8-1809, a public general law. Because the ordinances were not enacted under the County's home rule powers, they are not "public local laws" subject to referendum under §10(h) of Article 25B. While the General Assembly could allow a local referendum on an ordinance adopted under the authority of a public general law, this would demand a clear expression of legislative intent. The Critical Area Program statutes evidence no intent that ordinances adopted under the program be subject to local referendum.

*Letter to
Delegate Wheeler Baker
October 10, 2001*

UNCODIFIED STATUTES

Question: Sections 2 and 3 of Chapter 340, Laws of Maryland 2001 (the Antidiscrimination Act of 2001), are not printed in the Maryland Annotated Code. Where are uncodified legislative enactments printed and what is the legal status of uncodified language?

Answer: Sections 2 and 3 of Chapter 340 contain uncodified language relating to interpretation of the Act. Uncodified language is statutory language printed in the Session Laws that make up the actual law of the State, but it is not organized into the articles and sections of the Annotated Code and is not printed in the Code unless it is included in the Editor's Notes or other Code annotations.

*Letter to
Senator Leo E. Green
November 8, 2001*

**ZONING AND PLANNING -
AUTHORITY OF LOCAL HISTORIC
PRESERVATION COMMISSION
OVER STATE PROJECT**

Question: Does the Annapolis Historic Preservation Commission have jurisdiction over the expansion of the Banneker-Douglas Museum?

Answer: The Museum is a program of the Maryland Commission on African American History and Culture, which is a unit of the State Department of Housing and Community Development. The State is not required to obtain a permit from the Annapolis Historic Preservation Commission to proceed with the Museum expansion.

*Letter to
Paul Garvey Goetzke, Esquire*

November 20, 2001

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